Filed 3/4/19 In re J.A. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.A., Defendant and Appellant.	E070139 (Super.Ct.No. J274275) OPINION

APPEAL from the Superior Court of San Bernardino County. Pamela P. King, Judge. Affirmed.

Lillian Hamrick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Mary Katherine Strickland, Deputy Attorneys General, for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant J.A. (minor), a 15-year-old truant who smoked methamphetamine daily, was found in the driver's seat of a stolen vehicle. Pursuant to a plea agreement, minor pled guilty to misdemeanor conspiracy to commit a crime (Pen. Code, § 182, subd. (a)(1)) and was placed on formal probation in a group home. On appeal, minor argues the juvenile court abused its discretion in placing him in a group home by relying on the testimony of a probation officer who was not credible. In the alternative, minor claims the decision to treat him differently than juvenile offenders in San Bernardino County who had an option of being placed on summary probation violated his right to equal protection under the California and federal constitutions. We reject these contentions and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

On December 23, 2017, a Fontana police officer was dispatched to an apartment complex in response to a report of trash diggers. When the officer arrived, he found a vehicle blocking the entrance to the complex. The officer ran the plate on the vehicle and discovered it had been stolen from a location in San Bernardino. Minor, who initially reported a false name to the officer, was in the driver's seat of the vehicle. An adult male was in the passenger seat. Minor was 15 years old at the time of the incident and had no prior criminal history.

Minor was interviewed on December 26, 2017. He reported that he lived in El Salvador and moved to the United States to live with his aunt about two years ago. His parents both continued to live in El Salvador. About a year ago, minor left his aunt's home and began living on his own. Minor supported himself by buying and selling cars and lived in the city of Rialto with his coparticipant. He noted that he did not like living with his aunt and uncle and that he had no other family in the United States. Minor stated that he was using methamphetamine daily and supported his habit by selling vehicles. He also smoked marijuana weekly, and sometimes consumed alcohol. Minor had not attended school in about a year and associated with others between the ages of 20 to 30 years of age.

Minor's aunt was also interviewed on December 26, 2017. She explained that minor came to the United States in July 2016, after minor's mother sent him to this country as minor was being recruited by a gang. Upon arriving in the United States, minor was detained by Immigration Services in Texas and then released to minor's aunt. Minor's aunt enrolled minor in school, and he was doing fine at first. However, minor stopped attending school. Minor attended school from June 2016 to August 2016. Minor had poor grades in school, frequent absences, and no desire to attend school. Minor's aunt would drop minor off at school, but he would leave. Minor's aunt also noticed that minor began hanging around wrong crowds and smoking marijuana. When she and her husband would confront minor, he would become upset. Minor eventually ran away from his aunt's home in Riverside, California. Minor's aunt reported minor as missing to

police in September 2017, and she had not heard from minor since then. Minor's aunt and her husband indicated that they were no longer willing to house minor or have minor in their custody.

On December 27, 2017, a Welfare and Institutions Code[1] section 602, subdivision (a) petition was filed charging minor with receiving a stolen vehicle (Pen. Code, § 496d, subd. (a)), driving or taking a vehicle without the owner's consent (Veh. Code, § 10851, subd. (a)), and giving false information to a police officer (Pen. Code, § 148.9, subd. (a).)

The detention hearing was held on December 28, 2017. At that time, the juvenile court denied minor's counsel's request to release minor to child protective services, and detained minor in juvenile hall. Minor's behavior while in juvenile hall was described as "appropriate," "positive," and "good." Minor was respectful to all staff and got along with his peers. Minor's aunt and her husband had not visited minor in juvenile hall and had informed the probation officer that they wished to no longer be in communication with minor.

On January 12, 2018, the juvenile court granted the People's motion to amend the petition to add an allegation of misdemeanor conspiracy to commit a crime (Pen. Code, § 182, subd. (a)(1)). Minor thereafter admitted the amended charge of conspiracy to commit a crime. In return, the remaining allegations were dismissed. Minor was

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[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

continued detained in juvenile hall pending the dispositional hearing, and the matter was referred to the probation department for a dispositional report.

The probation officer interviewed minor on January 16, 2018. Minor denied stealing the vehicle or knowing it was stolen. He claimed that he and his friend bought the vehicle for $800. He reported having no problems while in juvenile hall. Minor described his relationship with his aunt and her husband as "'normal,'" and stated that he had resided with them for about a year, from June 2016 until June 2017. Minor also reported that he had run away from his aunt's home on three occasions, and indicated that his father was physically abusive towards him twice when he was 14 years old. Minor last attended school in 9th grade. He denied engaging in any fights at school or in the community. He also denied having any anger management issues or being a gang member, even though he tagged his cell door with "'MS IE Z[].'" In addition, minor denied having a substance abuse problem, but admitted to smoking cigarettes and marijuana and drinking alcohol starting at the age of 13, and using methamphetamine daily starting at the age of 14.

Minor's school records showed that minor was in the 10th grade. He had attended school from August 11, 2016, until August 29, 2017, and had a total GPA of 1.62. Minor's school records also indicated that minor had engaged in five behavioral incidents involving defiance, disturbing his class, and inappropriate language.

The probation officer spoke with minor's aunt and her husband on January 18, 2018. At that time, they again indicated their unwillingness to house minor in their

home. On January 22, 2018, the probation officer also spoke with San Bernardino County Children and Family Services (CFS). Minor's case was discussed with CFS, and CFS agreed minor should be afforded an opportunity to be housed in a group home. Minor reported that he would abide by directives set forth by CFS and the group home. Minor's behavior in juvenile hall remained positive. The probation officer noted that all options were considered and that minor was in need of intervention from CFS and the probation department. The probation officer opined that minor required strict supervision, and recommended that minor be declared a ward of the court, placed in the custody of CFS on formal probation, and maintained in CFS placement on various terms and conditions of formal probation. The probation officer explained that minor had multiple rehabilitative needs: improving his academics, refraining from drugs, ceasing negative peer interactions, engaging in prosocial activities, and increasing victim awareness.

The contested dispositional hearing was held on February 13, 2018. At that time, the juvenile court noted that it had read and considered the probation report and received the probation report into evidence. By the time of the hearing, minor had been placed out of county, over 300 miles away, in a group home.

At the hearing, Probation Officer Camille Cortes, who issued the report, testified that she had been a probation officer for 20 years, 10 years "on and off" with juvenile probationers. She also supervised other probation officers in juvenile cases. Cortes acknowledged that minor had been charged with misdemeanor offenses and

recommended formal probation for minor with a CFS lead. Cortes noted that minor required rehabilitative needs with a dual-status probation officer so that the probation officer could ensure minor was attending school, motivate minor, find out the reasons for minor's behavior, assist minor in his peer interactions and prosocial activities, enroll minor in a substance abuse program, and monitor minor's use by drug testing minor. Cortes believed that minor's rehabilitative needs could be accomplished on summary probation but that it would be "more difficult since [minor's] out of the county." Cortes explained that summary probation was not possible due to minor's "dual status" of being a section 300 dependent, because "to be dual status, [minor] has to be declared a ward." Cortes also noted that summary probation does not provide the same services "that a dual-status P.O. does." She explained that dual-status probation officers make in-person monthly contact with minors out of the county to the group home compared to summary probation officers who "do not do that."

Cortes admitted that she was not a dual-status probation officer, but explained that she had been associated with "[section] 241 court" as the court officer for about a year and a half, and had interacted with dual-status probation officers during that time. Cortes clarified, "And in conjunction, they work with the dual-status P.O.'s, and I worked in conjunction with them, and I have asked them before, and I have seen that they go out on a monthly basis to the group homes. They are the only unit, besides our placement P.O.s, that actually go to the group homes that are out of county and make that monthly contact. Whereas other units don't do that." Cortes admitted that she had not visited any out-of-

county placements for CFS dependents to assist with schooling issues. Cortes also admitted that she was not assigned a summary probation caseload or a dual-status caseload, but was assigned to "Wrap Around" referrals for families and youth to make sure the families and minors received appropriate referrals and services.

In response to minor's counsel's question of how probation intended to follow up with a minor that is placed 300 miles away, Cortes explained: "If he's declared a ward and placed on dual status, the dual-status unit does provide supervision. They are prepared to meet him at least monthly in a group home. That is what they are specialized for and prepared to do, is to meet on a monthly basis at the group home, make sure that they have supervision and contact with him on a monthly basis and with the group home staff and also with the social worker. That's why it is a specialized unit. They provide supervision and services." Cortes admitted that she had not been a dual-status probation officer and that her testimony concerning dual-status probation officers was "through hearsay." She was aware that there were dual-status minors on summary probation and that those minors also had probation officers but noted that summary probation officers did not always go out to the group home.

Cortes recommended that minor be placed on formal probation because a dual-status probation officer and a CFS worker would be assigned to him. She again explained that dual-status probation officers are part of a specialized unit and receive additional training regarding contacting youth in group homes and the rules and regulations associated with group homes. Cortes acknowledged that minors on summary

probation are able to receive similar terms and conditions, but believed formal probation was more appropriate for minor because minor was not only in need of treatment and services, "but also the supervision that he has been lacking." Additionally, minor was in an out-of-county group home and needed a probation officer who could go out to the group home on a monthly basis. Further, on formal probation, if minor did not follow directives, probation could place him under arrest and file a violation petition if warranted. Therefore, in Cortes's opinion, formal probation was in minor's best interest.

Following Cortes's testimony, minor's counsel asked the juvenile court to place minor on summary probation. In support of her argument, counsel relied on the following: (1) minor had only been charged with misdemeanor offenses, (2) minor's lack of a criminal record, (3) the fact that Cortes had never had a summary probation caseload, (4) minor could receive the same services on summary probation, (5) the group home minor would be placed in would make sure he went to school and stopped using drugs, and (6) summary probation was the least restrictive environment.

The prosecutor requested that the juvenile court follow Cortes's recommendation. She explained that prior to his arrest, minor "had slipped through virtually every crack that there was," such that "at age 15 he was in a room rented from strangers . . . not going to school, frequently using drugs, and sustaining a petition for vehicle theft." The prosecutor noted that with formal probation, minor would have more supervision and "one more trained adult who has the opportunity to meet with him monthly, check on his welfare, determine if he needs anything." The prosecutor believed that given minor's

"frequent drug use, the gang concerns, the lack of parental involvement," formal probation was appropriate.

The juvenile court declared minor a ward of the court and placed him on formal probation. The court found that minor's needs were greater than those of a typical minor on summary probation. The court explained a probation officer and CFS worker would provide him with "two people working for the same goal of assisting this young man who doesn't have a parent or a family member working with him." The court also observed that although minor was only charged with misdemeanors, "the sophistication reflected in the underlying conduct [was] far greater" than it seemed "on its face and far greater than most minors that would be placed on summary probation." In the court's opinion, minor's chance of finding "someone who he can relate to and be responsive to on a personal basis [was] far greater" if he worked with two people.

The court noted, "And while, yes, the testimony elicited indicated technically [section] 725(a) [summary probation] could provide certain services—the same services, the reality is, as we heard at the last hearing, it is not provided. It is the dual-status probation officers who provide these services to individuals who are outside of the county, who do have specialized training to work with someone who is out of our county and probably to work with the probation departments in other counties. The reality is he's not going to have that contact and that relationship with the probation officer if he's on 725. He's only going to have the CFS social worker. And I am hopeful that he will be responsive to both of those individuals in his life. But I think he's far more likely to

receive the services and be successful with both parties addressing these needs." Furthermore, the court found Cortes credible, explaining: "[J]ust because the officer has not actually handled a particular caseload does not suggest to me that the officer has not learned her field. She's in charge of doing investigations and addressing the various kinds of services that are available, and she doesn't have to be someone who has played in each of those roles in order to have credibility and understand the roles that these individuals play."

On March 8, 2018, minor filed a timely notice of appeal.

III

DISCUSSION

A. *Placement Decision*

Minor argues the juvenile court abused its discretion when it placed minor on formal rather than informal probation. We disagree.

We review a placement decision only for abuse of discretion and will indulge all reasonable inferences to support the decision of the juvenile court. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473 (*Asean D.*).) An appellate court will not lightly substitute its decision for that of the juvenile court and the decision of the court will not be disturbed unless unsupported by substantial evidence. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617.) Under the substantial evidence standard of review, an appellate court reviews the record in the light most favorable to the findings of the trier of fact. (See *In re George T.* (2004) 33 Cal.4th 620, 630-631.) """"If the circumstances

reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.'"' [Citation.]" (*Id.* at p. 631.)

We examine the evidence in light of the purposes of the juvenile court law. (*In re Michael R.* (1977) 73 Cal.App.3d 327, 333; *In re Carlos E.* (2005) 127 Cal.App.4th 1529, 1542 [purposes of the juvenile system include "the protection of the public as well as the rehabilitation of the minor"].) Evidence relevant to the disposition includes, but is not limited to, the age of the minor, the circumstances and gravity of the offenses committed, and the minor's previous delinquent history. (§ 725.5.) The juvenile court may place the minor on formal probation without previous resort to less restrictive placement. (See, e.g., *Asean D.*, *supra*, 14 Cal.App.4th at p. 473.)

Determinations of suitability for informal supervision are also proper functions of juvenile court judges, independent of a probation officer's discretion. (*In re Armondo A.* (1992) 3 Cal.App.4th 1185, 1188-1189.) A probation officer is allowed "to delineate a program of informal supervision in lieu of filing a petition or requesting the prosecuting attorney to file a petition to declare the minor a ward. The probation officer is guided in this decision by the factors listed in California Rules of Court . . . ." (*Id.* at p. 1188.) The juvenile court, however, "must exercise its own discretion in its decision whether informal supervision is appropriate." (*Id.* at p. 1189.)

In this case, the juvenile court properly exercised its independent discretion when it determined informal probation was not appropriate for minor after considering all of

the evidence. The evidence demonstrates that minor was placed in a group home approximately 300 miles away to address his needs. Cortes, who had 20 years of experience and was a supervisor in the probation department, testified that minor would receive additional attention if placed on formal probation. She explained that juveniles placed on informal probation were assigned only a CFS worker, while juveniles on formal probation were assigned to a CFS worker and a dual-status probation officer. Cortes also explained that because dual-status probation officers received specialized training regarding working with youth in out-of-county placements, formal probation would be a better fit for minor based on minor's needs. Furthermore, dual-status probation officers were able to visit the out-of-county group homes—like the one minor was living in—on a monthly basis. Minor does not dispute his placement in the out-of-county group home. The juvenile court considered minor's request to place him on informal probation but found formal probation more appropriate for minor based on minor's needs being greater than those of typical minors on informal probation. Minor's age, his lack of any family support, the circumstances of his offenses, his possible gang involvement, his poor academic performance, his history of behavioral issues, and his drug and alcohol abuse all support the juvenile court's decision to place minor on formal probation.

Minor argues that Cortes was not a credible witness because she never had a summary probation caseload and, therefore she "had no personal knowledge" about how juvenile probation worked. However, the juvenile court found Cortes to be a credible

witness, and this court may not reweigh the evidence or make credibility determinations. "The function of an appellate court is not to reweigh the evidence and substitute its judgment for that of the juvenile court." (*In re Juan G.* (2003) 112 Cal.App.4th 1, 6, fn. omitted.) Moreover, the evidence does not support minor's claim. Cortes testified that she had worked in juvenile probation for 10 of her 20 years as a probation officer. Before becoming a supervisor, she supervised "Wrap Around" families in the juvenile probation department. In addition, as part of her duties as a supervisor, she learned how summary and formal juvenile probation worked. Accordingly, Cortes had direct personal knowledge of how probation officers supervised juveniles under formal and informal probation. As the juvenile court observed, Cortes was "in charge of doing investigations and addressing the various kinds of services that are available" and "the roles that [probation officers] play."

Minor maintains the juvenile court's ruling was "not supported by substantial evidence." To support his argument, minor relies on *In re Carlos J.* (2018) 22 Cal.App.5th 1. *Carlos J.* is distinguishable. There, a minor without a substantial record in the juvenile court system admitted to assault with a firearm and a gang enhancement. (*Id.* at pp. 4, 7.) The probation department recommended the Division of Juvenile Justice (DJJ), citing the gravity of the offense and indicating gang intervention services were warranted (but not mentioning specific programs at DJJ). (*Id*. at pp. 7-9.) The juvenile court committed the minor to DJJ, indicating it could not "'get over the seriousness of the offense'" and noting recent changes at DJJ allowed it to "'provide

additional services . . . .'" (*Id*. at p. 9.) The Court of Appeal reversed, finding no substantial evidence of probable benefit and explaining "there must be some specific evidence in the record of the programs at the [DJJ] expected to benefit a minor." (*Id*. at p. 10, italics omitted.) Here, in contrast, Cortes and the juvenile court explained the benefits to minor of being placed on formal probation rather than informal probation. The court noted the attention minor would receive from dual-status probation officers who had specialized training working with out-of-county placements and the services minor would receive. The court also stated that minor's needs were greater than those of typical minors on summary probation and that minor would benefit from "two people working for the same goal" since minor did not have a parent or family to support him.

Based on the foregoing, keeping the goals of the juvenile court law in mind, we find no abuse of discretion in the juvenile court's decision to place minor on formal probation.

B. *Equal Protection*

Minor asserts that the juvenile court violated his right to equal protection when it placed him on formal probation while similarly situated minors were placed on summary probation. Minor's argument is unmeritorious.

"A prerequisite to a meritorious [equal protection] claim is that individuals '"similarly situated with respect to the legitimate purpose of the law receive like treatment."' ([*In re*] *Gary W.* [(1971)] 5 Cal.3d 296, 303; accord, *In re Lemanuel C.* (2007) 41 Cal.4th 33, 47; *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) Where

two or more groups are properly distinguishable for purposes of the challenged law, it is immaterial if they are indistinguishable in other respects. (*Cooley*,[ ] at p. 253.) Nor, absent this threshold requirement, is an equal protection inquiry into the justification for any legislative distinction necessary. (See *Gary W.*, at pp. 304, 306.)" (*People v. Barrett* (2012) 54 Cal.4th 1081, 1107.) The state has adopted no classification that affects similarly situated groups in an unequal manner. (See *Cooley*, at p. 253; *In re Ricky H.* (1981) 30 Cal.3d 176, 190.) The Welfare and Institutions Code contemplates that the court will give individualized consideration to the needs and circumstances of each "[m]inor[ ] under the jurisdiction of the juvenile court as a consequence of delinquent conduct." (§§ 202, subd. (b), 725.5; *In re William M.* (1970) 3 Cal.3d 16, 31.)

Minor relies on *People v. Olivas* (1976) 17 Cal.3d 236. In *Olivas*, the 19-year-old defendant was committed to the California Youth Authority following his conviction for a misdemeanor assault. (*Id.* at p. 239.) The term imposed was potentially longer than the maximum term which might have been imposed for a person over the age of 21 years. (*Ibid.*) The section which authorized the defendant's commitment to the California Youth Authority applied only to adults under the age of 21 or youths 16 to 18 years old who were prosecuted as adults. Defendant challenged the length of his commitment on equal protection grounds. The appellate court first found that the statute classified "an identifiable group of individuals into two smaller groupings only one of which may be subject to commitment to the Youth Authority." (*Id.* at p. 243.) The Supreme Court specifically noted that it was not dealing with a juvenile versus adult situation but an

adult versus adult situation. The court expressly declined to express an opinion on the merits of an argument dealing with juvenile versus adult. (*Ibid*., fn. 11.) The defendant did not challenge the classification as suspect but challenged it based on a fundamental interest analysis. The court found the interest at stake was that of personal liberty and such an interest is a fundamental interest subject to strict scrutiny. (*Id*. at pp. 250-251.) The People failed to show that the classification was based on a compelling interest. (*Id*. at pp. 243, 251-257.)

A threshold flaw in minor's argument here is a failure to show "the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." (*In re Eric J.* (1979) 25 Cal.3d 522, 530, italics omitted.) We reject minor's contention that "the two groups of minors were similarly situated because they both *should have been* eligible for formal and informal probation and were treated differently because of the county where they were placed." Thus, minor's equal protection argument necessarily fails.

Moreover, based on minor's individual circumstances, it was "reasonable for the court to conclude that there was a significant risk that he would reoffend and that close monitoring of his behavior for a limited period was appropriate to his circumstances." (*In re R.V.* (2009) 171 Cal.App.4th 239, 249 [rejecting juvenile's equal protection claim that other similarly situated juveniles were not placed on GPS monitoring].) Minor's individual circumstances demonstrate that minor required formal probation. Minor had a history of abusing methamphetamine, running away, living on his own with adults,

possibly being involved in a gang, having educational problems, and not having relatives willing to care for him. Formal probation would permit minor's probation officer to more effectively monitor minor's progress. There was no denial of minor's equal protection rights simply because other judges dealing with other minors under different circumstances may not have felt that formal probation was necessary or appropriate. (See, e.g., *In re Kacy S.* (1998) 68 Cal.App.4th 704, 711-712 [Rejecting argument that statute authorizing juvenile court to require urine testing violated equal protection because "'an individual in another court or in another county whose offense was [similar to his] may not be required to submit to urine testing depending on the whim of the particular court.'"].)

Minor argues that the juvenile court placed him on formal probation "based on nothing more" than his residence in an out-of-county facility. The record does not support this contention. Minor's placement in the group home was one of many factors the court found in placing minor on formal probation. The court explained that it selected formal probation for the following reasons: (1) minor's needs were greater than those of a typical minor on summary probation; (2) minor would benefit from "two people working for the same goal" of rehabilitating him in light of the fact that he did not "have a parent or a family member working with him"; (3) the sophisticated nature of minor's offenses; (4) minor would have greater access to services on formal probation; and (5) dual-status probation officers have specialized training working with out-of-county placements.

Minor also asserts that because minor was in an out-of-county group home, placing him on informal probation "was not available to the trial court." The record does not support minor's claim. The juvenile court never stated that it was unable to place minor on informal probation. The court simply concluded that, based on minor's individual needs and circumstances, formal probation was more appropriate.

We find that minor has failed to show the juvenile court denied him equal protection of the law by placing him on formal probation.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.